

Clerk of Court, Posting Notices. Notice, by Whom Posted. Informations, Leave for Filing. Term of Court, Expiration of Court, Expiration of Terms.

The clerk of the district court may cause a notice to be posted either by signing and posting himself or his deputy may do so, or the clerk may sign it and the attorney may post it.

A written motion or showing is the safer practice where leave of court is obtained to file an information, and the court may require such showing as will satisfy it before the granting of such leave.

If terms of court expire at the close of the calendar year, the court may call a special session before the beginning of the first regular term of the next year.

Helena, Montana, January 18, 1909.

Hon. J. H. Stevens, County Attorney, Kalispell, Montana.

Dear Sir:

Your letters of January 12 and 15 received. In the first letter you desire to know the duty of the clerk in posting notices under Section 7440, Revised Codes, where it provides that the clerk must give notice thereof by causing the notice to be posted. Under this section the clerk can either sign and post the notice himself and then make affidavit of the posting, or his deputy can sign them in the clerk's name, by himself as deputy, and make affidavit of the posting, or the clerk or deputy can sign them and deliver them to the attorney, in which case the attorney would make the affidavit of the posting of the notice and file the same with the clerk.

You also state in said letter that you desire a copy of the Opinions of the Attorney General of 1905-'06, as your predecessor did not seem to have the same. Our supply of said reports is exhausted. However, we hold the receipt, dated February 23, 1907, signed by Mr. McKeown, in which he acknowledges receipt of a copy of the Opinions of the Attorney General of 1905-'06. This copy is branded "County Attorney, Flathead County," and belongs to the County Attorney's office and should be turned over by your predecessor to you

As to your second letter, regarding the terms of court and the showing necessary in order to secure leave of court to file an information, your attention is called to the case of *State v. Martin*, 29 Mont. 274, which discusses the question of the showing necessary to be made in order to secure an order of court granting leave to file an information and the court there said that it is not "a mere perfunctory matter which should be granted as of course, but rests in the sound discretion of the district judge upon the showing made to him at the time." Therefore, if the court, in the exercise of his discretion, deems that the showing be reduced to writing, the only thing to do is to make a written showing sufficient to satisfy the court. In fact, that is the safer practice in all cases. (Sec. 8928, Rev. Codes.)

As to the expiration of the terms of court, this is a matter that is now before the district court and which we would therefore, not care to express an opinion upon to you, as the court is the best judge of when its terms begin and end. However, under Section 6272 the court would clearly have authority to call a special term of court, if he so desired, before the regular term begins on the first Monday of March of this year. Of course, if the court is of the opinion that the last regular term of 1908 is adjourned, or that it does not extend into the year 1909, and does not desire to call a special term, then your only mode of procedure is to hold a preliminary examination and have the defendant bound over.

Very truly yours,

ALBERT J. GALEN,

Attorney General.